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No. 05-

IN THE

Supreme Court of the United States

PAUL ALFRED BIEN-AIMÉ,

Petitioner,

v.

ALBERTO R. GONZALES,
Attorney General of the United States,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court of Appeals erred in denying Petitioner's petition to review the Board of Immigration Appeal's order denying him asylum and withholding of removal.

PARTIES TO THE PROCEEDING

The parties to the proceeding are Petitioner Paul Alfred Bien-Aimé and Respondent Alberto R. Gonzales, Attorney General of the United States of America.

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PUBLICATIONS

Claire Cooper & Emily Bazar, *Immigration Appeals Swamp Federal Courts*, Sacramento Bee, Sept. 5, 2004 15

Dan Eggen, *Immigration Backlog Forces Justice to Shift Staffing: Hundreds of Lawyers Being Reassigned to Deal With More Than 4,000 Appeals in New York City*, Washington Post, Dec. 14, 2004 15

Lisa Getter, *A Man's Asylum Fight in the Land of the Free: His 642-Day Journey Through the Backlogged Immigration Court Could Happen Anywhere and Calls Into Question "Justice for All,"* Los Angeles Times, Apr. 15, 2001 16

Stanley Mailman & Stephen Yale-Loehr, *Immigration Appeals Continue to Overwhelm Federal Courts*, The Legal Intelligencer, Jan. 19, 2005 15

Cited Authorities

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Solomon Moore & Ann M. Simmons, *Immigrant Pleas Crushing Federal Appellate Courts*, Los Angeles Times, May 2, 2005 15

Tom Perrotta, *Immigration Appeals Surge in Second Circuit*, New York Law Journal, Nov. 4, 2004 .. 15

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Petitioner Paul Alfred Bien-Aimé respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The unofficial report of the unpublished decision of the United States Court of Appeals for the Fourth Circuit (1a-3a)[1] is available at 121 Fed. Appx. 524, 2005 WL 348366, 2005 U.S. App. LEXIS 2124 (4th Cir. Feb. 9, 2005).

STATEMENT OF JURISDICTION

The judgment of the Fourth Circuit was entered February 9, 2005. The order denying Bien-Aimé's petition for rehearing and rehearing en banc was entered on April 19, 2005. (18a-19a.) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves the following statutory provisions:

> The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a

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1. Numbers followed by an "a" refer to pages in the Appendix submitted with this Petition. Numbers preceded by "J.A." refer to pages in the Joint Appendix submitted to the Court of Appeals.

> refugee within the meaning of section 1101(a)(42)(A) of this title.

8 U.S.C. § 1158(b)(1).

> The term "refugee'" means . . . any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1101(a)(42)(A).

> [T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1231(b)(3)(A).

The regulation 8 C.F.R. § 1208.13, cited in the Fourth Circuit's opinion, is reprinted in the Appendix to this Petition. (20a-26a.)